

IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL
WRIT PETITION NO. 56 (MS) OF 2001

Arvind Mohan Badoni,
s/o late Sri Parshu Ram Badoni,
R/o 262/227 Khurbura Mohalla,
Dehradun, Manager Amar Shaheed Sri Dev,
Suman Nursery Avam Shilai Bunai,
Shiksha Kendra, Dehradun. Petitioner.

Versus

1. District Judge, Dehradun.
2/1. Digvendra Mohan Srivastava,
2/2. Vivek Mohan Srivastava.
both S/o late Madan Mohan,
2/3. Mrs. Navedita Srivastava,
D/o Madan Mohan Srivastava,
All R/o 19 Kaonwali Road,
Dehradun. Respondents.

Dated: 17.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Rajendra Dobhal, Advocate for the
petitioner and Standing Counsel for the respondent no.1.

2. By the present writ petition, the petitioner has
prayed for a writ of certiorari quashing the order dated 13th
February, 2001 passed by the District Judge, Dehradun.

3. Briefly stated, a suit was filed by the
plaintiff/petitioner Arvind Mohan Badoni being Original Suit

No. 355 of praying for permanent injunction restraining the respondents not to interfere in the peaceful possession of the plaintiff. During the course of the suit, the plaintiff has also filed an application 6-C i.e. interim injunction which was granted in favour of the petitioner on 18th November, 1998.

4. According to the petitioner during the pendency of the aforesaid injunction, respondent no. 2 has got a wall constructed. Accordingly an application was filed on 16th October, 2000 for demolition of the said construction and restoring the previous position. The trial Court has granted the prayer on 22nd December, 2002 (Annexure No. 7 to the writ petition).

5. However, the defendant went in Revision being Revision No. 35 of 2001 *Madan Mohan Srivastava Vs. Arvind Mohan Badoni*. The revision has been allowed on 13.02.2001.

6. Against the aforesaid order, present writ petition has been filed. At present since the suit is already pending, however, liberty is given to the petitioner to amend the prayer of the suit itself and claim the relief and ultimately the relief of demolition shall depend upon the disposal of the suit itself.

7. In view of the aforesaid, at present I don't find any reason to interfere with the order. However, it will be open in the suit itself to frame an issue and decide the same itself on the basis of the evidence on the record.

8. Subject to the aforesaid observation, writ petition is disposed with a direction to the Civil Judge (Jr. Division), Dehradun to decide the Suit No. 355 of 1998 Arvind Mohan

Badoni Vs. Madan Srivastava and others within a period of four months from the date of production of the certified copy of this order. However, till the disposal of the suit, parties are directed to maintain status quo and to abide by the decision of the court of the Civil Judge (Jr. Division).

9. Consequently, writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

17.08.2006
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